



BULLETIN

Summary of legislative bills

The following is a summary of the bills passed during the last legislative session which relate to the workers' compensation system. Also included is a list of other bills passed by the legislature which pertain to the judiciary or state government. If you would like copies of any of these bills, please contact the legal section. The bills are also accessible on the Unicameral's web site at <http://www.unicam.state.ne.us>.

Bills related to workers' compensation

LB 417

Section 48-106 was amended to provide that if an employer who is excluded from the Act under that section elects not to bring his/her employees into the workers' compensation system, and a health, accident or other insurance policy covering such employees contains an exclusion of coverage if the insured is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such employees.

Section 48-115 was amended to provide that an executive officer of a corporation who owns 25 percent

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Nebraska Workers' Compensation Court
State Capitol Building, Lincoln, NE 68509
800-599-5155 or 402-471-6468
<http://www.nol.org/workcomp/>



Amendments to rules adopted

The following amendments to the Nebraska Workers' Compensation Court's Rules of Procedure were adopted at a public hearing on April 25, 2002:

1. Rule 26, Medical Fee Schedule, was amended to change the effective date of the court's Schedule of Medical and Hospital Fees and to adopt a revised schedule effective June 15, 2002.
2. Rule 29, First Report of Alleged Occupational Injury or Illness, was amended to incorporate nonsubstantive wording changes relating to entities responsible for filing first reports of injury, to adopt an amended NWCC Form 1 (First Report of Alleged Occupational Injury or Illness) [for consistency with OSHA filing requirements], and to revise the instructions on the back of the Form 1.
3. Rule 30, Subsequent Report, was amended to further define those entities responsible for filing subsequent reports, to clarify the circumstances under which a subsequent report must be filed, to extend to 14 days the time period within which a subsequent report shall be filed following the closing of a case, to incorporate new language relating to court acceptance of subsequent reports filed by electronic means, to eliminate July 1, 2002 as the deadline for mandatory electronic filing of subsequent reports, to adopt an amended NWCC Form 4 (Subsequent Report), and to revise the instructions on the back of the Form 4.

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Court Bulletin enters it's 65th year of publication

The Nebraska Workers' Compensation Court *Bulletin* was first issued in March, 1937 for "passing on to all parties interested in the application and administration of the Nebraska Workmen's Compensation Act, such information as may be deemed of value."

Summary of legislative bills

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or more of the common stock of that corporation is not an employee unless such officer elects to opt *in* to the workers' compensation system (rather than such an executive officer being deemed an employee unless he/she opts *out*, as previously written.) This law will take the Workers' Compensation Court out of the waiver/opt-in process. A corporate officer who elects to bring him/herself into the workers' compensation system must file such election with the workers' compensation insurer in addition to the corporation secretary. The election is effective upon receipt by the insurer, and is effective until terminated in writing to the insurer, or until the insurer ceases to provide coverage to the corporation. Such terminations also must be filed with the corporation secretary. This language is consistent with what is already in place for individual employers, partners, and similar business entities in that their elections must also be filed with the insurer. [See additional article on page 3.]

Section 48-139 was amended to state that lump sum settlement applications may provide for payment of future medical expenses incurred by the employee.

Effective date of 48-106 and 48-139, July 19, 2002.

Operative date of 48-115, January 1, 2003.

LB 547

Sections 28-631 (Nebraska Criminal Code) and 44-6603 and 44-6604 (Insurance Fraud Act) were amended to expand criminal prosecution and civil enforcement of

fraudulent insurance acts. The law clarifies that fraudulent insurance acts by or against a workers' compensation self-insurer are included under the Insurance Fraud Act. In addition, workers' compensation self-insurers will be required to pay an annual fee as established by the Director of Insurance not to exceed \$1,000. Such funds will be collected by the Workers' Compensation Court, credited to the Department of Insurance Cash Fund, and may be appropriated only to carry out the purposes of the Insurance Fraud Act. Willful refusal by a self-insurer to pay the fee shall be grounds for the Workers' Compensation Court to suspend or revoke the approval of such self-insurer to provide workers' compensation coverage.

Effective date July 19, 2002.

LB 1310

Section 48-1,116 was amended to make a one-time transfer of \$4 million dollars from the Compensation Court Cash Fund to the General Fund within 15 days after July 1, 2002.

Effective date April 9, 2002.

Bills related to the judiciary

LB 876

This bill makes multiple amendments under Chapter 25 to change the civil procedure code in Nebraska from that of a code pleading system to a notice pleading system. The bill specifies that "petition" is replaced with "complaint" and that various pleadings characteristic of a code pleading system, such as a demurrer, are elimi-

nated. In addition, the bill provides that the Supreme Court shall, by January 1, 2003, promulgate rules for notice pleading. A number of other statutes are also amended to accommodate the rules that will be developed by the Supreme Court. Also amended into LB 876 is a provision stating that the holiday schedule for courts will include any days declared by law or proclamation of the governor to be holidays. Such a change is intended to bring the holiday schedule of the courts in conformity with other branches of state government.

Operative date of Chapter 25 amendments, January 1, 2003.

Operative date of provision requiring Supreme Court to promulgate rules, and provision regarding court holidays, July 19, 2002.

LB 22

This bill provides additional procedures and requirements to secure the rights of deaf and hard-of-hearing persons who cannot readily understand or communicate in spoken language. It requires the Commission for the Deaf and Hard of Hearing to license and evaluate licensed interpreters. Prior to September 1, 2002, the Commission will also be required to develop licensed interpreter guidelines for distribution, develop training to implement the guidelines, adopt and promulgate rules and regulations to implement the guidelines, and develop a roster of interpreters.

Effective date July 19, 2002.

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Compliance Notes:**Reimbursement of 'in-town' mileage**

The court has recently become aware that some insurance companies may be denying reimbursement of in-town mileage expenses citing Section 48-120(2)(a)

of the Nebraska Workers' Compensation Act. It is the court's position that in-town mileage which has been properly documented by an employee must be paid, except when the employee's choice of physician fits the scenario described in that particular section of the Act.

which we are not aware, the court will continue to maintain its position that Section 48-120 does require the payment of in-town mileage expenses.

Summary of legislative bills

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Bills related to state government**LB 276**

This bill creates the offense of identity fraud. In connection therewith, the public records statutes were amended to provide that public records may be withheld from disclosure if they contain social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

Effective date July 19, 2002.

LB 921

This bill sets forth a definition of "professional employer organization" for purposes of the Employment Security Law. A PEO is a recognized business entity, but not a temporary help agency, that contracts with a client for a majority of its workforce. The intent of the bill was to clarify that a PEO is not a temporary employee leasing company, and that the client company—not the leasing company—is the actual employer of the employees for purposes of unemployment insurance.

Effective date April 20, 2002. ❖

The three-judge opinion in Vopalka v. United Phone Book Advertisers, Doc. 81, No. 319 and single-judge opinions in Parrish v. Holiday Inn dba Brandywines, Doc. 91, No. 51, and Lawrence v. Ralston Public School, Doc. 200, No. 1321 all allow reimbursement for in-town travel. Absent some authority to the contrary of

Continued use of Section 48-120(2)(a) by an insurance carrier, self-insured employer, or risk management pool to deny reimbursement of properly documented in-town mileage expenses will be considered by the court to be "knowingly misrepresenting a provision of the Nebraska Workers' Compensation Act," a violation of the unfair claim handling standards in Section 48-146.02(2)(a) of that Act. ❖

Notice:**Executive officer coverage changes**

Effective Jan. 1, 2003, executive officers of a corporation who own 25 percent or more of the corporation's common stock will no longer automatically be considered employees of the corporation under the Nebraska Workers' Compensation Act. Since the officer will not automatically be covered under the corporations' workers' compensation insurance policy, no Corporate Executive Officer Waiver of Rights will be required if the officer chooses not to be covered. To the contrary, effective Jan. 1, 2003 if such an executive officer *wants* to be covered as an employee of the corporation, a written election of such coverage must be filed with the workers' compensation insurer as well as with the corporation secretary.

The election is effective upon receipt by the insurance company and remains in effect as long as continuous coverage is provided by that insurer or until the officer provides written notice of termination to the insurer and the corporation secretary. No notice of election or termination is to be filed with the court. Likewise, no Corporate Executive Officer Waiver of Rights or Termination of Waiver forms are to be filed with the court after Jan. 1, 2003.

This change to section 48-115 of the Act can be found in LB 417, passed during the most recent legislative session. Questions about this change can be directed to the corporation's insurance agent or company or to the court. ❖

New filing requirements for discovery materials

The Nebraska Workers' Compensation Court has implemented a recently amended Supreme Court Rule regarding filing of discovery materials. Under the new Supreme Court Rule 26(g), discovery materials that do not require action by the court shall not be filed with the court.

This rule was adopted because the routine filing of discovery material has unnecessarily overcrowded court files. Filings that are no longer required by the compensation court include:

- notices of deposition,
- depositions,
- certificates of filing a deposition,
- interrogatories,
- answers and objections to interrogatories,
- requests for documents and responses or objections to such requests,
- requests for admissions and responses or objections to such requests,
- subpoenas for depositions or other discovery and returns of service of subpoenas, and related notices.

Parties are now required to keep possession of this discovery material and file it only upon court order or when required by law. Also, according to the Supreme Court comments to Rule 26, discovery materials used to support or resist a motion for summary judgment shall not be filed separately. Section 25-1332 makes clear that the court may consider them only if they are admitted as evidence.

For more information, please contact the Nebraska Workers' Compensation Court at 800-599-5155 or 402-471-6468. ❖

New EDI advisory notice forthcoming

The court's Electronic Data Interchange staff are compiling a new EDI advisory notice which will include a reminder on how to obtain court-assigned values for missing social security numbers, as well as numerous amendments to the court's First Report of Injury and Subsequent Report of Injury Implementation Guides.

For more information on the court's EDI project, please visit our Web site's EDI page (<http://www.nol.org/workcomp/edi/edi.htm>). The EDI page has a link from which visitors can subscribe to receive automatic email notice of upcoming EDI advisory updates. ❖

Revised publications available

A number of publications have been revised following the recent public hearing of the Nebraska Workers' Compensation Court.

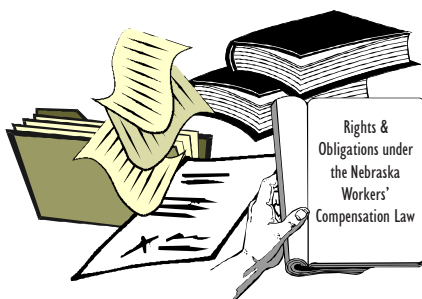
The court's *Rules of Procedure*, April 2002 is now available (\$7.00 each). Also, the court's Form 1, *First Report of Alleged Occupational Injury or Illness*; Form 4, *Subsequent Report*; and Form 12P, *Nebraska Record of Compensation Insurance*, have been revised. These forms are available at no charge.

To order any of the court's publications or forms, please complete

and send the order form on the following pages, along with a check or money order for the total amount, to the Nebraska Workers' Compensation Court, P. O. Box 98908, Lincoln, NE 68509-8908.

The new forms and rules as well as most of the publications and forms produced by the Nebraska Workers' Compensation Court are also available on our Web site at: <http://www.nol.org/workcomp/>.

Due to the increasing use of outsourcing for court publications and the increasing use of the court's Web site, the court's Subscription Service will no longer be offered. Subscribers to this service will be added to the court's mailing list to continue to receive the court's *Bulletin* and public hearing notices. Please direct questions or comments to the court at 402-471-6468 or 800-599-5155 or email us at newcc@wcc.state.ne.us. ❖



Nebraska Workers' Compensation Court**Order Form****(No Charge Items)****Ship To:**

Name _____

Company Name _____

Address _____

(City) _____ (State) _____ (Zip Code) _____

Phone (____) _____

Nebraska Workers' Compensation Court

P. O. Box 98908

Lincoln, NE 68509-8908

Phone: 402-471-6468 or 800-599-5155

FAX: 402-471-2700

Web site: <http://www.nol.org/workcomp/>**OFFICE USE ONLY**

Paid by:	Check	_____
	Cash	_____
	Mailed	_____
	Picked Up	_____

Please specify "single" or "package" when ordering**Packages of 250 or Single Forms (No Charge)**

# SGL	# PKG	Form Number/Item Name	# SGL	# PKG	Form Number/Item Name
		Form 1--First Report of Injury/Illness (Rev. 03/02)			Form 4--Subsequent Report (Rev. 03/02)
		Form 12--Insurance Coverage (Rev. 6/95)			

Packages or Single Pamphlets (No Charge)

# SGL	# PKG	Item Name
	(25)	Rights & Obligations (English 2/01)
	(25)	Rights & Obligations (Spanish 2/01)
	(50)	Choosing a Doctor for a Work-Related Injury (English 11/99)
	(50)	Choosing a Doctor for a Work-Related Injury (Spanish 11/99)
	(25)	Vocational Rehabilitation Services under Workers' Compensation (English 2/01)
	(25)	Vocational Rehabilitation Services under Workers' Compensation (Spanish 2/01)
	(50)	Informal Dispute Resolution and Mediation (English 1/00)

Single Forms (No Charge)

Quantity	Form Number/Item Name	Quantity	Form Number/Item Name
	Form 10T--Termination of Corporate Officer Waiver (Rev. 12/96)		Form 50--Choice of Doctor (English 1/97)
	Form 63-1--Request for Independent Medical Examiner (7/97)		Form 50--Choice of Doctor (Spanish 8/97)
	Form 67-2--Notice of Agreement to use a Named Independent Medical Examiner (7/97)		

Note: Requests for large orders may require additional time for printing; subject to cost.**Turn this page over for additional publications**

Nebraska Workers' Compensation Court**Order Form****(Fee Items)****Ship To:**

Name _____

Company Name _____

Address _____

(City) _____ (State) _____ (Zip Code) _____

Phone (____) _____

Nebraska Workers' Compensation Court
P. O. Box 98908

Lincoln, NE 68509-8908

Phone: 402-471-6468 or 800-599-5155

FAX: 402-471-2700

Web site: <http://www.nol.org/workcomp/>**OFFICE USE ONLY**

Paid by:	Check	_____
	Cash	_____
	Mailed	_____
	Picked Up	_____

Other Forms & Publications

Quantity	Form Number/Item Name	Unit Cost	Total
	Form 10W—Corporate Executive Officer Waiver (Rev. 01)	\$1.00	
	Law Book (Includes 2001 Legislative Revisions) To order, contact LexisNexis at 1-800-562-1197.		
	Rule Book (Rev. 04/02)	\$7.00	
	Annual Report (FY 01)	\$5.00	
	Schedule of Medical & Hospital Fees (June 15, 2002) To order, contact Ingenix, Inc. at 1-800-765-6023. Please request item number 3981 (book only) or 3982 (book and ASCII).		
Payment should be only for publications and/or services indicated on this order form		Total Due	

All orders must be prepaid before shipping—either by check or money order

Service and handling charges are included in the listed cost of each item. Forms may be picked up at the court's location, 13th Floor, State Capitol. Please call ahead to be sure your order is ready (if paying with cash, the correct amount is required). Order forms and other information may also be downloaded from the Nebraska Workers' Compensation Court's internet web site: <http://www.nol.org/workcomp/>. For further information, or if your order is not received within three weeks, please contact the court's information line at either **402-471-6468** or **800-599-5155**.

Turn this page over for additional publications

Amendments to rules adopted

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4. Rule 32, Reporting of Compensation Insurance, was amended to adopt an amended NWCC Form 12P (Record of Compensation Insurance — Intergovernmental Risk Management Pool). No change is being proposed to the wording of this rule.
5. Rule 43, Change of Vocational Rehabilitation Counselor, was amended to clarify court procedures for selection of a vocational rehabilitation counselor when a change is requested, and to provide that once a change is accomplished the counselor shall obtain written agreement from the parties on the specific services to be provided.
6. Rule 46, Settlement Agreements, was amended to eliminate a requirement that a first report of alleged injury be filed or on file at the time of an application for approval of a settlement agreement.
7. Rule 47, Lump Sum Settlement, was amended to eliminate a requirement that a first report of alleged injury be filed or on file at the time of an application for approval of a lump sum settlement, and to provide that when an annuity or structured settlement is used to effectuate a lump sum settlement, such settlement shall state that the owner of the annuity or structured settlement shall be someone other than the employee or other beneficiary, and that the employee or other beneficiary shall have no control over or right to transfer the annuity or structured settlement.
8. Rule 69, Insurance and Self-Insurance, was amended to eliminate certain general self-insurance provisions and to eliminate references to the addendum setting forth Minimum Standards for Self-Insurers in conjunction with the proposed adoption of new Rules 70 through 76 relating to minimum standards and other requirements for employers seeking court approval to self-insure.
9. The previous Rule 70, Self-Insurance Security Requirement, was repealed in conjunction with the proposed adoption of new Rules 71 through 76 relating to self-insurance, and a new Rule 70, Self-Insurance Purpose, was adopted to set forth the purpose of Rules 71 through 76 and certain general provisions relating to employers seeking court approval to self-insure.
10. A new Rule 71, Self-Insurance Application For Approval, was adopted to establish application procedures for employers seeking court approval to self-insure.
11. A new Rule 72, Self-Insurance Requirements For Approval, was adopted to establish certain requirements for employers seeking court approval to self-insure.
12. A new Rule 73, Self-Insurance Security, was adopted to incorporate and amend language previously codified at Rule 70 relating to self-insurance security requirements, and to further define security requirements for employers seeking court approval to self-insure.
13. A new Rule 74, Self-Insurance Excess Insurance, was adopted to establish excess insurance requirements for court-approved self-insurers.
14. A new rule 75, Self-Insurance Reporting Requirements, was adopted to establish reporting requirements for court-approved self-insurers.
15. A new Rule 76, Self-Insurance Renewal, Termination, was adopted to establish procedures for employers desiring to renew or terminate court approval to self-insure.

The recently amended Forms 1 and 4, as well as the new Rule Book can be ordered from the Nebraska Workers' Compensation Court using our Order Form provided on pages 5 & 6 of this issue of the *Bulletin*. The court's Schedule of Medical and Hospital Fees can be ordered by contacting Ingenix, Inc. at 1-800-765-6023. Please request item number 3981 (book only) or 3982 (book and ASCII).

Also, the new forms and rules as well as most of the publications and forms produced by the Nebraska Workers' Compensation Court are available on our Web site at: <http://www.nol.org/workcomp/>. ❖

Court returns to State Capitol

Effective January 8, 2002, the Nebraska Workers' Compensation Court's temporarily relocated offices returned to the 12th and 13th floors of the State Capitol. Office phone numbers remain the same.

- **Mail:**

All mail, including certified, registered, and express mail should continue to be addressed to the court's post office box: Nebraska Workers' Compensation Court, P.O. Box 98908, Lincoln, NE 68509-8908.

- **Deliveries:**

When a physical location address is required

(FedX, UPS, deliveries, etc.) please use: Nebraska Workers' Compensation Court, 13th Floor, State Capitol, 1445 'K' St., Lincoln, NE 68508.

- **Filings (By Mail):**

All filings by mail should continue to be addressed to: Nebraska Workers' Compensation Court, P.O. Box 98908, Lincoln, NE 68509-8908.

- **Filings (In Person):**

Please go to the 13th Floor, State Capitol, 1445 'K' St., Lincoln, NE.

The Nebraska Workers' Compensation Court's staff at staff at 525 South 13th St. will remain at that location.❖

E-mailing judges' assistants

Following are the current e-mail addresses of our judges' assistants.

- **Dawn Jensen**, djensen@wcc.state.ne.us (Assistant to Judges High and Hoffert)
- **Angie Conner**, angie.conner@wcc.state.ne.us (Assistant to Judges Van Norman and Fitzgerald)
- **Linda Malfait**, linda.malfait@wcc.state.ne.us (Assistant to Judges Cavel, Coe, and Brown)

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Bulletin



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